(2012) 02 AHC CK 0050

In the Allahabad High Court

Case No : C.M.W.P. No. 19766 of 1988

Shyam Behari Lal APPELLANT

Vs

State of U.P. and others RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 3(15), 4A, 4H

Citation : (2012) 5 ADJ 699 : (2012) 3 AWC 3189 : (2012) 116 RD 34

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : V.S. Singh and Vishwa Jeet Singh, for the Appellant;

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Head learned Counsel for the parties. This writ petition arises out of proceedings for determination of surplus land under U.P. Imposition of Ceiling on Land Holdings Act, 1960. Initially Prescribed Authority through order dated 18.2.1976 declared 18.06 acres land of the petitioner in terms of irrigated land as surplus. In appeal the surplus land was reduced to 6.86 acres. Thereafter writ petition was filed in this Court being Writ Petition No. 3683 of 1977, which was allowed on 21.4.1980 and matter was remanded to the Prescribed Authority. The necessity to remand arose for the reason that some land gifted by the petitioner-tenure holder to Shiv Kumar was treated to be tenure holder without issuing notice to Shiv Kumar. The High Court directed that notice must be issued to Shiv Kumar which was accordingly done.

2. The gift deeds are dated 3.5.1971, 15.10.1971 and 8.12.1971 i.e. in between 24.1.1971 and 8.6.1973. At that time Shiv Kumar was minor.

3. After remand by the High Court, the matter was decided by Prescribed Authority/ S.D.O., Jhansi on 14.07.1982 declaring 5.79 acres land (in terms of irrigated land) as surplus with the tenure holder petitioner. The said order was

passed in Case No. 18 of 1974, State v. Shyam Bihari and others. The Prescribed Authority again held that the gift deed was liable to be ignored as it was executed after 24.1.1971. However the Prescribed Authority granted two reliefs to the tenure holder. One was to the extent of 1.09 acres land (0.68 in terms of irrigated land), which was the area which had been reduced from the holding of the petitioner during consolidation. The other was to the extent of 0.39 acres land which was a calculation error in the earlier orders of the Prescribed Authority/ Appellate Court.

4. Against the order passed by the Prescribed Authority dated 14.7.1982, both the parties filed appeals. Appeal of the State was numbered as 2 of 1982 renumbered as 17/8 of 1985-86. Appeal of the tenure holder Shyam Bihari was registered as Appeal No. 202 of 1982 renumbered as 140/6 of 1985-86. Both the appeals were consolidated and decided by common judgment dated 20.9.1988 by Additional Commissioner, Jhansi Division, Jhansi. Appeal of the State was allowed and appeal of the petitioner was dismissed, hence this writ petition by tenure holder.

5. In my opinion appeal of the State was wrongly allowed on highly technical grounds. The application/ prayer for correction of calculation error which had been allowed by the Prescribed Authority through the subsequent order (challenged in the appeals giving rise to the instant writ petition) was held to be barred by time. Even if the objection was raised beyond time still an error of calculation could be corrected by the Prescribed Authority at any time. Such power is always inherent in every Court, tribunal, judicial or quashi judicial authority. Even purely executive authority also cannot refuse to correct a calculation error whenever pointed out.

6. As far as the question of grant of benefit of reduction in area during consolidation is concerned, the lower appellate Court held that in the order of remand earlier passed by the High Court such question was not left open. This view was utterly wrong. High Court remanded the matter through judgment dated 21.4.1980 while the order of Assistant Consolidation Officer resulting in reduction of area of land of petitioner had been passed subsequently i.e. on 1.10.1981. Even if the said order had been passed on consent of the petitioner still petitioner was entitled to the benefit of resultant reduction in area.

7. However as far as the appeal of the petitioner was concerned, in my opinion that was rightly rejected by the lower Appellate Court. The main point argued by the petitioner before the lower Appellate Court in his appeal as well as in this writ petition was that his land had wrongly been held to be one crop irrigated land. Land in dispute is situate in district Jhansi, which is Bundelkhand area. By virtue of section 4(H) of the Act in Bundelkhand area one and one-half hectares of single crop land counts as one hectare irrigated land. In the explanation to the said section it has been provided as under:

For the purposes of Class (ii), the expression "single crop land'' means any unirrigated land capable of producing only one crop in an agricultural year in consequence of assured irrigation from any State irrigation work or private irrigation work.

8. State irrigation work is defined u/s 3(15) of the Act which includes a canal also. Admittedly a canal is situate in the area in question. Both the Courts below after perusal of khasras of 13?8 to 1380 Fasli found that for each of the three years a crop had been shown to have been sown in the land in dispute hence it was single crop land. For the relevant three years the land was irrigated from the canal. Some notice of Executive Engineer was filed before the Prescribed Authority and on the basis of the same Prescribed Authority held that there was not sufficient water in the canal for producing two crops in a year, however it did not mean that there was not even sufficient water for producing one crop in a year. In any case what is relevant is actual position of growing of crop in 1378 F to 1380 F and in the land in dispute in the Khasras of the said years crop was shown in each year.

9. The argument on behalf of petitioner before the Courts below as well as this Court in this regard was that the canal from which the land in dispute could be irrigated was not included in Schedule No. 1 of the notification dated 31.3.1953. However that necessity is provided only u/s 4-A, firstly of the Act section 4-A deals with determination of irrigated land. Under that very section (4-A), secondly, the words "State irrigation work'' are mentioned. In Bundelkhand area special concession has been granted by the Act and one and one-half hectares of single crop is counted as one hectare. Under the definition of State Irrigation Work there is no such requirement that it must be Schedule No. 1 canal.

10. The registered gift deeds have rightly been ignored as they were executed after 24.1.1971 and there was no question of any sale consideration. Shiv Kumar within few months i.e. on 7.10.1971 sold part of the said gifted land. Annexure-1 to the writ petition is statement of Shiv Kumar who stated that he sold the property gifted to him on 7.10.1971 to two persons. The dates of the gift deeds are given as 3.5.1971, 15.10.1971 and 8.12.1971. On the first date 16 acres and odd land was gifted, on the second date 5 acres and odd land was gifted and on the third occasion, 3 acres land was gifted, total 24.3 acres land. Land gifted on 3.5.1971 (16 acres and odd) was sold by him on 7.10.1971 to two different persons. Accordingly, writ petition is allowed in part. Judgment and order passed by the lower appellate Court allowing the appeal of the State is set aside however the judgment and order dismissing the appeal of petitioner is maintained. The judgment and order passed by the Prescribed Authority dated 14.7.1982 is restored.

